

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RALPH WILLIAM MCCLAIN, JR.,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
SGT ALVERIAZ, LT. DOYLE, C.O.	:	
SHOVLIN, C.O. HUESBY, C.O. SEVERA,	:	NO. 07-5551
C.O. SANCHEZ, DR. FISHTein, and	:	
JOHN DOES #1-3	:	

ORDER

AND NOW, this 26th day of *October*, 2009, upon consideration of Defendant Priscilla Thomas's Motion to Dismiss (Docket No. 44) and Plaintiff's Response thereto (Docket No. 48); Defendant Mark Fishtein, M.D.'s Second Motion to Dismiss Plaintiff's Amended Complaint, or in the Alternative, for Summary Judgment (Docket No. 45), Plaintiff's Objection thereto (Docket No. 50), and Defendant Fishtein's Reply Brief (Docket No. 53); and the Motion for Judgment on the Pleadings by Defendants Alveriaz, Doyle, Shovlin, Sanchez, and Severa (Docket No. 55), and upon conducting an evidentiary hearing on October 6, 2009 as to the issues raised in the above Motions, it is hereby **ORDERED** as follows:

1. Defendant Thomas's Motion to Dismiss is **GRANTED. JUDGMENT IS ENTERED** in favor of Defendant Thomas and against Plaintiff;
2. Defendant Fishtein's Second Motion to Dismiss Plaintiff's Amended Complaint or, in the Alternative, for Summary Judgment is **GRANTED. JUDGMENT IS ENTERED** in favor of Defendant Fishtein and against Plaintiff;
3. The Motion of Defendants Alveriaz, Doyle, Shovlin, Sanchez, and Severa is **GRANTED. JUDGMENT IS ENTERED** in favor of these Defendants and against Plaintiff; and

4. Plaintiff's Motion to Alter the Court's Order (Docket No. 58) and Motion to Transfer (Docket No. 59) are **DENIED**.¹

It is so **ORDERED**.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.

¹ Two Defendants remain in this action – Defendants C.O. Huesby and Nurse Heather. Neither Defendant, however, was properly served with the Complaint, filed April 3, 2008, nor the Amended Complaint, filed September 26, 2008. Federal Rule of Civil Procedure 4(m) provides, in relevant part, that “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” FED. R. CIV. P. 4(m).

Accordingly, this Order shall serve as notice to Plaintiff that failure to properly serve Defendants Huesby and Heather within thirty days from the date of this Order shall result in dismissal of the Amended Complaint against them without prejudice.